

A photograph of a snowy mountain range with a large iceberg in the foreground. The mountains are covered in snow and have some rocky outcrops. The sky is clear and blue. The foreground shows a body of water with a large, white iceberg floating in it. The text is overlaid on the image.

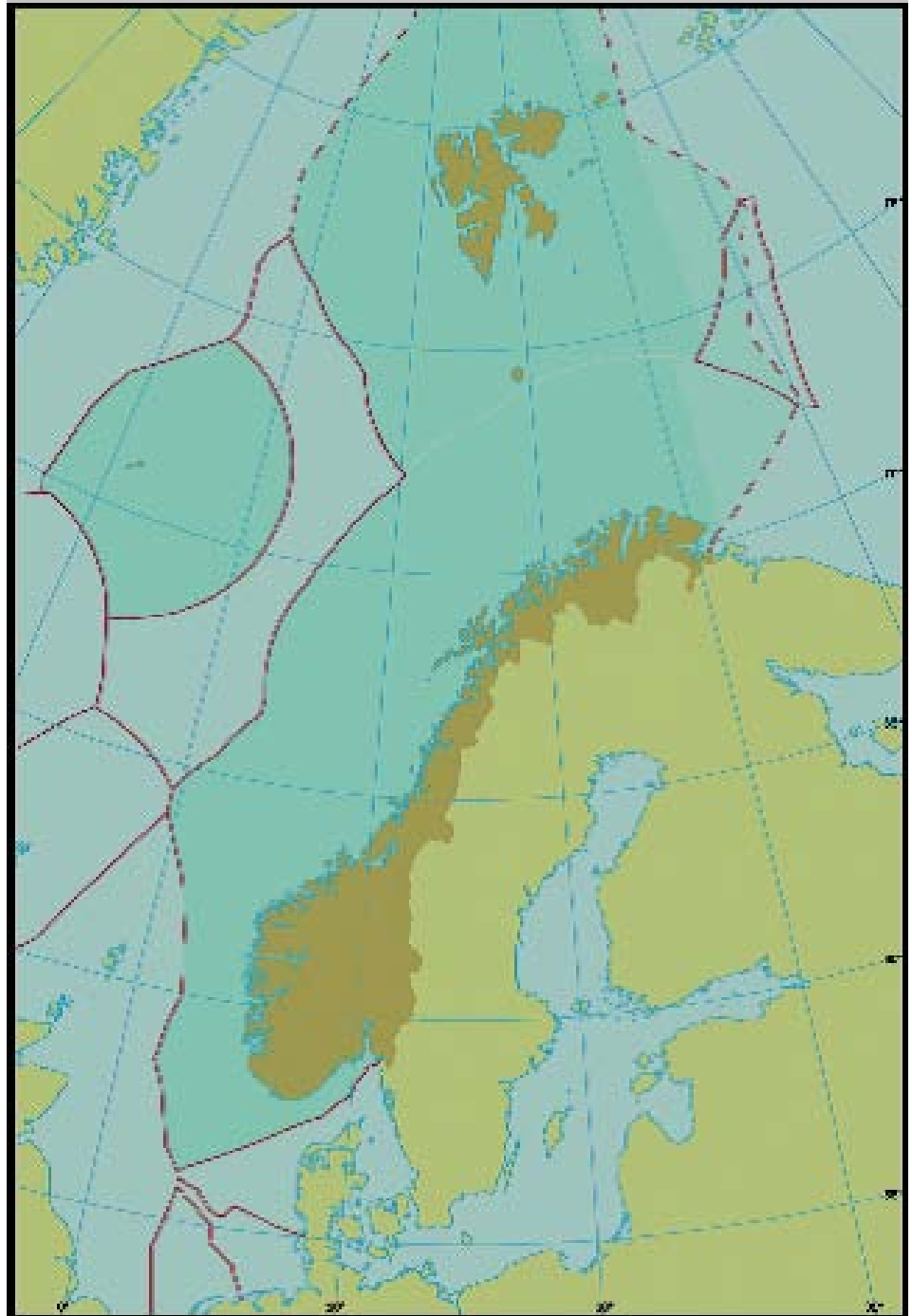
Competing Claims in Svalbard's Offshore Areas

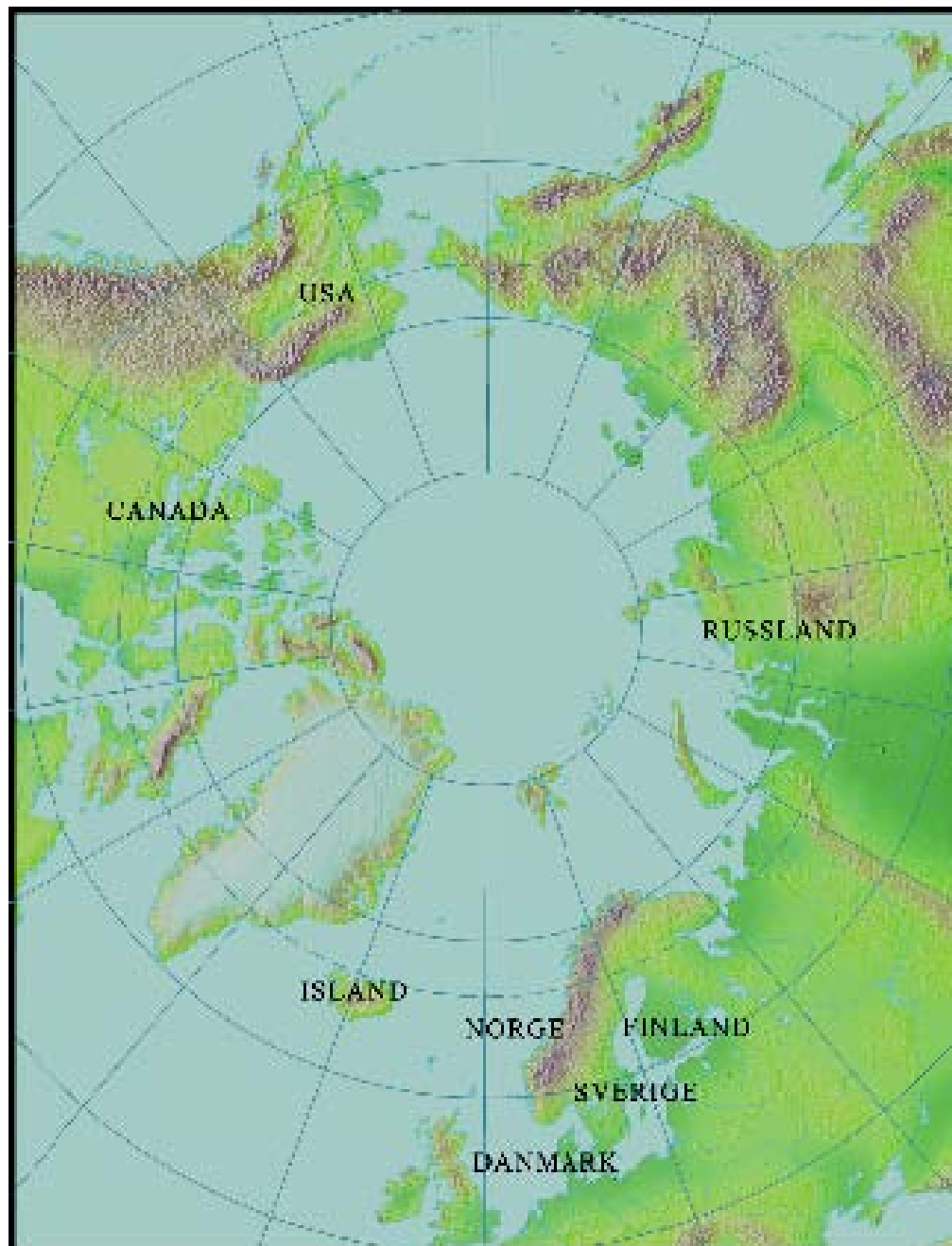
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Note:

**Distance Svalbard –
North Norway 350 nm**

**Bear Island is part of
Svalbard**





Treaty concerning the Archipelago of Spitsbergen, 1920

- ❑ Art. 1. Parties “undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over” Spitsbergen
- ❑ Art. 2. “Ships and nationals” of all parties “shall enjoy equally the rights of fishing and hunting” in all the islands of the archipelago and “in their territorial waters”.
- ❑ Art. 3. Nationals of all parties shall be admitted “on a footing of absolute equality” “to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters”.
- ❑ 40 parties to Treaty, including all the five Arctic coastal States and most of larger EU Member States

The Maritime Zones of Svalbard

- ❑ Territorial sea. Originally 4 nm, extended to 12 nm with effect from 1.1.2004
- ❑ 24 nm contiguous zone (2004)
- ❑ 200 nm fishery protection zone (1977), rather than EEZ. Non-discriminatory regulation of fisheries.
- ❑ Continental shelf. Boundary with Greenland agreed, 2006. Submission to CLCS re shelf beyond 200 nm north of Svalbard, 2006.

The Question

- ❑ Do the rights in Articles 2 and 3 of the 1920 Treaty – or does the Treaty generally - apply on the continental shelf of Svalbard or in the FPZ (or eventual EEZ)?
- ❑ Since neither the continental shelf nor the EEZ existed as legal concepts in 1920, it is clear that the 1920 Treaty does not provide an explicit answer to this question.

Views of some of the Treaty parties

- ❑ Treaty rights in Arts 2 and 3 do not apply to maritime zones beyond the territorial sea (Norway, in the past supported by Canada and Finland)
- ❑ Treaty rights do apply (Iceland, Russia, Spain and the United Kingdom)
- ❑ Norway is not entitled to exercise jurisdiction over non-Norwegian vessels fishing in Svalbard's FPZ (Iceland, Spain and Russia)
- ❑ Svalbard is not entitled to any maritime zones beyond the territorial sea (USSR/Russia at times in past)
- ❑ A number of parties (including France, Germany and the USA) have publicly reserved their position/Treaty rights

Svalbard is not entitled to any maritime zones beyond the territorial sea

Occasionally argued by Russia/USSR in past, **BUT**

- ❑ Every island (except an uninhabitable rock) is entitled to a full set of maritime zones (Art. 121, UNCLOS)
- ❑ Nothing in the 1920 Treaty to suggest Norway is not entitled to establish maritime zones in respect of Svalbard
- ❑ All parties (apart from occasionally USSR/Russia) have accepted Svalbard's entitlement to maritime zones

Treaty rights in Arts 2 and 3 do not apply to maritime zones beyond the territorial sea

- ❑ The Treaty is unambiguous and should be given its ordinary, literal meaning [but: VCLT Art. 31 also refers to context and object and purpose]
- ❑ Restrictions on sovereignty are not be presumed [but: widely seen as an out-dated approach to treaty interpretation]

(Note: Norway appears to have abandoned argument that Svalbard has no continental shelf, cf. 2006 boundary treaty re Greenland; submission to CLCS)

Treaty rights in Arts 2 and 3 apply beyond the territorial sea

- ❑ Treaty should be given an evolutionary interpretation [but: this approach to interpretation is not universally accepted. Compare *Aegean Sea*, *Shrimp/Turtle* cases with *Grisbådarna*, *Guinea Bissau/Senegal* and *Abu Dhabi* cases]
- ❑ Rights apply by analogy. Rights over FPZ and cont shelf derive from Norway's sovereignty over Svalbard, therefore restrictions on sovereignty should also extend to FPZ and cont shelf [but: weakness of arguments by analogy]

Arts 2 and 3 apply beyond the territorial sea (cont.)

- ❑ Anomalous if Arts 2 and 3 do not apply. Parties' rights in territorial sea would then be greater than in FPZ and on cont shelf [but: anomalous consequences do not necessarily invalidate a literal reading of the Treaty]
- ❑ Practice of parties re FPZ (cf VCLT Art. 31(3)(b)) [but: Norway does not accept its non-discriminatory treatment in FPZ is based on Treaty (query: can this still be maintained after 32 years?). No equivalent practice re cont shelf]

Norway has no right to exercise jurisdiction over non-Norwegian vessels fishing in FPZ

There seems little to support this view.

- ❑ Under Art. 2 Norway has jurisdiction to adopt fishery conservation measures for the territorial sea equally applicable to all Treaty party nationals. If right to fish under Article 2 extends to FPZ, so must Norway's jurisdiction.
- ❑ Norway's exercise of jurisdiction in territorial sea has been uncontested by other parties

